

MINUTES
ARIZONA STATE BOARD OF TECHNICAL REGISTRATION
1110 West Washington, Conference Room #240
Phoenix, AZ 85007

Tuesday, March 22, 2016
9:00 a.m.
OPEN SESSION

1. **CALL TO ORDER** – 9:08 AM
2. **ROLL CALL** – Board Members in attendance: LeRoy Brady, Douglas Folk, Jason Foose, Neal Jones, Jason Madison, Edward Marley, Stephen Noel and Robert Stanley. Absent: Alejandro Angel. Staff: Melissa Cornelius, Michelle Fleming, Douglas Parlin, Patrice Pritzl, and Travis Holbrook. Assistant Attorney General: Michael Raine.
3. **CALL TO THE PUBLIC** – No one addressed the Board.
4. **ADOPTION OF MINUTES**

Review, Consideration, and Possible Action on the following:

- A. Approve, modify and/or reject February 23, 2016 Board meeting minutes. – The members reviewed the minutes. Mr. Folk moved to approve the minutes. Mr. Madison seconded the motion. No further discussion; motion carried.

5. **CONSIDERATION OF CASES REFERRED FOR FORMAL HEARING**

- A. Case No. P14-070, Gregory E. Schwerdt, Architect #29731
Mr. Brady opened the hearing. The Respondent was not present and was not represented by legal counsel. Mr. Michael Raine, Assistant Attorney General, appeared on behalf of the State. Mr. Mark Harris, Assistant Attorney General, appeared to provide legal advice to the Board. All Board Members, with the exception of Dr. Alejandro Angel, were present to hear and weigh the evidence presented in the formal hearing. The Board considered Respondent's attorney's (who is licensed in Kansas) letter to the Board for consideration as a possible response to the Complaint and Notice of Hearing. The Respondent was served notice of the hearing in January 2016. His attorney responded formally in March 2016. Mr. Raine argued that the hearing could proceed without the Respondent being present, without prejudice.

Mr. Raine presented a brief opening statement. The Respondent failed to disclose a criminal conviction, by checking "no" on his renewal application. The Respondent's conviction was reversed on appeal and was subsequently dismissed.

The State called Mr. Parlin, the Board's Enforcement Manager, to provide testimony. The Chairman, Mr. Brady, swore in Mr. Parlin. Mr. Parlin identified the State's exhibits, including Respondent's renewal application, which was received in November 2013. Mr. Parlin noted that Respondent checked the box on the application referring to criminal convictions as "no." He testified that the board staff checks the Lexis/Nexis data base to confirm all applicants' responses and determined that Respondent had been convicted of a crime and it appeared that his answer on the renewal application was false. The staff then reached out to the Respondent to determine why he failed to disclose the conviction. The Respondent sent the Board a response letter with court records demonstrating a DUI conviction in Kansas. The Respondent's attorney indicated in a letter to the Board that under Kansas law the conviction isn't final until all appeal rights have been exhausted - which was the reason Respondent answered "no" to the Board's question on the renewal application. Respondent's appeal of his DUI conviction was successful; his conviction was reversed, and criminal charges were dismissed.

The Board admitted the State's exhibits one through four. Mr. Parlin explained that Respondent should have checked the box on the renewal application as "yes" and should have explained the situation involving his DUI conviction. His "no" answer was considered misleading.

Mr. Folk asked Mr. Parlin whether the Board staff's correspondence from Respondent was answered. Mr. Parlin indicated that staff sent correspondence to Respondent and his attorney and that it was not included in the State's exhibits. Mr. Parlin clarified that Respondent had only one DUI conviction. Mr. Folk asked whether Mr. Parlin learned if Respondent had received legal advice prior to answering the application question as "no." He observed from the record the Respondent did not appear to seek legal counsel until after a complaint was opened.

In closing argument, Mr. Raine argued that Respondent had the responsibility to disclose his DUI conviction truthfully on his renewal application, as required by Arizona law. He asked that the Board impose some form of discipline on Respondent to prevent other registrants from failing to disclose information to the Board that might be critical in the future.

Mr. Marley moved to adopt all Factual Allegations in the Complaint as Findings of Fact. Mr. Folk seconded the motion. No further discussion; motion carried. Mr. Folk moved to adopt as Conclusions of Law those Violations alleged in the Complaint and Notice of Hearing. Mr. Marley seconded the motion. No further discussion; motion carried. The Board discussed a final Order. Mr. Folk noted that Respondent's argument regarding Kansas law was not persuasive and moved to impose a Letter of Reprimand on Respondent, along with costs of the investigation and an administrative penalty of \$150.00. Mr. Madison seconded the motion. No further discussion; motion carried.

- B. Case No. P14-073, David Joseph Buttke, Architect #23461
Roll call was taken for this hearing. Board members in attendance were: LeRoy Brady,

Douglas Folk, Jason Foose, Neal Jones, Jason Madison, Edward Marley, Stephen Noel and Robert Stanley. Absent: Alejandro Angel.

Respondent, David Buttke, appeared and represented himself. The State was represented by Mr. Michael Raine, Assistant Attorney General, and Mr. Mark Harris, Assistant Attorney General, appeared to provide independent legal advice to the Board.

Mr. Raine presented a brief opening statement. Respondent checked “yes” on his renewal application, indicating that he had been convicted of a crime in 2014, since his last renewal, and he described the convictions (DUI and attempted unlawful flight-which was a C6F). The Respondent served his criminal probation successfully and his Class 6 felony was redesignated as a misdemeanor.

Respondent presented a brief opening statement and stated that Mr. Raine’s statement was accurate.

The State called Respondent as its first witness. The Chairman, Mr. Brady, swore him in. Respondent has been a registered architect since 1989 and practices in Prescott. Respondent identified the State’s exhibits 1-his renewal application and 2-a letter dated March 28, 2014, which he sent to the Board after staff inquired about the convictions. Respondent admitted to being convicted of misdemeanor DUI and Attempted Unlawful Flight, a class 6 undesignated felony, in January 2014, and was sentenced to probation. He confirmed Exhibit 3-Respondent’s email response to Mr. Raine indicating all his minor crimes were resolved/disposed after he completed all the conditions of his probation. The Chair admitted Exhibits 1-3, with redaction of personal identifying information.

Mr. Folk asked Respondent whether his convictions were related to his practice as an architect. Respondent answered that the convictions were indirectly related to his practice because they illustrated a moment of bad judgment.

Respondent indicated that he was open to questions from the Board members. He reiterated that he completed criminal probation.

Mr. Raine presented a closing argument. He stated that the case did not proceed to hearing timely, which is why Respondent was able to complete probation while the case was pending prosecution by the AG’s Office. Respondent asked for “mercy” from the Board.

Mr. Folk moved to adopt the Factual Allegations in the Complaint and Notice of Hearing and add an additional Finding of Fact that the criminal convictions did not relate to the Respondent’s practice as an architect. Mr. Folk moved to find that the State failed to carry its burden of proof to establish that violations of law occurred. Mr. Marley seconded the motion. No further discussion; motion carried. Mr. Harris advised that the Board’s order should be non-disciplinary. Mr. Folk moved to dismiss the complaint; Mr.

Stanley seconded the motion. No further discussion; motion carried.

6. ENFORCEMENT MATTERS

Review, Consideration and Possible Vote on the following:

A. Complaints Proposed for Resolution by Dismissal or Closure:

1. P16-033, Manuel Flores, Non-Registrant

Board Staff recommended the dismissal of this complaint against Respondent. Mr. Folk questioned whether he was practicing outside of the size exemption, and Mr. Marley noted that the exemption wouldn't apply because this was a public works project. Mr. Brady noted that the property is privately owned, but the building was intended to be used for a public purpose. The Board reviewed ARS 142(A); which requires a registrant to prepare plans for public works projects.

Mr. Kraemer explained that Mr. Flores told him that he did not prepare any plans. He noted that Mr. Flores is not a registered contractor.

Mr. Marley expressed a desire to see additional information. Mr. Folk referred to the letter Respondent's attorney sent to the Board as evidence that he was practicing without registration. Mr. Folk moved to offer Respondent a consent agreement for an assurance of discontinuance, administrative penalty fee of \$1000 and the costs of investigation. Mr. Marley seconded the motion. No further discussion; motion carried.

B. Complaints Proposed for Resolution by Letters of Concern:

1. P15-089, Martin Sandino, R.A #59457

The Respondent, Martin Sandino, appeared and addressed the Board. The Complaint alleged that Respondent held himself out as qualified and licensed to practice architecture without being registered at the time of the project in question. Respondent told the Board that he had an "agreement" with the Board to call himself an "arquitecto" in Arizona for the past 20 years as long as he disclosed that he wasn't registered in AZ. Mr. Thacker informed the Board that Respondent was registered in Mexico.

Mr. Stanley moved to issue Respondent a Letter of Concern. Mr. Madison seconded the motion. No further discussion; motion carried

2. HI16-017, John Erceg, C.H.I. #50352

3. HI15-007, Kurtis Nelson, C.H.I. #38457

Mr. Marley moved to consent items 6B(1) and 6B(2), and to issue proposed Letters of Concern. Mr. Madison seconded the motion. No further discussion; motion passed.

4. P16-038, Michael Murphree-Roberts, P.E. (Civil) #52186

Respondent, Michael Murphee-Roberts appeared and addressed the Board. The Board opened a complaint against Respondent for failure to exercise the required technical knowledge and skill by preparing and sealing a home foundation inspection report that

may have failed to include required HUD information. Staff recommended a Letter of Concern for failing to include required HUD information in the report.

Mr. Noel asked Respondent about the HUD requirements and why they weren't in the report. Respondent explained that HUD instructed that inspections do not require details for the type of property involved in this complaint. Mr. Folk asked who hired Respondent. Respondent stated he was hired by the lender.

Mr. Foose moved to dismiss the case. Mr. Madison seconded the motion. No further discussion; motion carried.

C. Complaints Proposed to Offer Consent Agreement:

1. P15-032, Raad Salih, P.E. (Civil) #34016

Respondent, Raad Salih, appeared and addressed the Board. The Board and Respondent had previously entered into several consent agreements with payment requirements. Respondent requested a payment plan, to be completed within 24 months, rather than 12 months. Staff proposed an alternate consent agreement that would accommodate Respondent's request. Staff noted that Respondent has been cooperative. Mr. Marley moved to offer Respondent the newly proposed consent agreement. Mr. Foose seconded the motion. No further discussion; motion carried.

2. HI16-016, Fidelity Inspection & Consulting Services, Non-Registrant Firm

Mr. Jim Ballenger, appeared and addressed the Board on behalf of the unregistered firm. Staff recommended that the Board offer Respondent a consent agreement including civil penalties in the amount of \$4000, costs of investigation in the amount of \$600, an assurance of discontinuance to include on agreement to provide the full home inspection reports with its review. Mr. Ballenger explained that the Firm provides relocation services and hires licensed CHIs to conduct the home inspections. The Firm wants to figure out how to provide the information to clients, respecting that it cannot hold itself out as a home inspection firm, and asked that a portion of the consent regarding the provision of the home inspection report be removed from the offered consent.

The Board dialoged with Mr. Ballenger about his concerns with the portion of the proposed consent agreement's assurance of discontinuance requiring that his firm attach the entire inspection report with its relocation report.

Mr. Marley moved to table the case until the May 2016 Board meeting. Mr. Folk seconded the motion. No further discussion; motion carried.

3. HI15-021, Travis Russell, Non-Registrant (Revoked C.H.I.)

Mr. Stanley moved to offer the proposed consent agreement. The matter will proceed to formal hearing if not signed within 30 day. Mr. Madison seconded the motion. No further discussion; motion carried.

4. P16-044, Raul C. Pino, R.A. #18234

George King, attorney for Respondent Raul Pino, appeared and addressed the Board. The complaint alleged that Respondent failed to pay a collaborating professional within 7 days of receiving payment. Mr. Pino filed bankruptcy in 2015 and the alleged non-payment was included in the filing documents. Mr. King explained that the complaint was only filed after the complainant learned that Respondent had filed bankruptcy and named him a creditor. He asked that the Board dismiss the complaint.

Mr. Marley commented that good moral character of the Board's registrants is a greater concern to him than the bankruptcy filing. He stated that he wouldn't support dismissing this case. Mr. Noel agreed. Mr. Marley supported the idea of amending the proposed consent agreement to include a conclusion of law regarding his violation of the Board's requirement that registrants possess good moral character and repute. It was noted that the firm's registration expired in 2011.

Mr. Foose moved to offer Respondent a consent agreement addressing good moral character issues as per ARS 128(C)(5). Mr. Marley seconded the motion. Mr. Madison supported including an administrative penalty and cost of investigations in the consent agreement. The motion was withdrawn.

Mr. Marley moved to table this case to receive legal advice from Mr. Raine at its April meeting regarding its options. Mr. Stanley seconded the motion. No further discussion; motion carried.

D. Complaints Proposed for Resolution with Signed Consent Agreements:

1. P15-020, David Ashton, P.E. (Civil) #16225

2. HI16-015, Steven Anderson, C.H.I. #51896

The Board received a signed consent agreement from Respondent. Mr. Stanley moved to accept the signed consent agreement. Mr. Madison seconded the motion. No further discussion; motion carried.

3. AL16-006, James P. Godfrey, Non-Registrant, JPG Security Consulting, LLC, Non-Registrant Alarm Business

4. AL16-007, Vincent Winget, Alarm Controlling Person #56641

Mr. Madison moved to consent items 6D(3) and 6D(4); to accept the signed consent agreements. Mr. Marley seconded the motion. No further discussion; motion carried.

5. P16-028, Timothy Gaudette, R.L.S. #45721

The Board received a signed consent agreement from Respondent. Mr. Foose moved to accept the signed consent agreement. Mr. Stanley seconded the motion. No further discussion; motion carried.

E. Review and Approval of Appointment for EAC Membership:

1. Patrick McGarrity, R.L.S. #49459

2. Spencer Ellingson, P.E. (Civil) #51459

Mr. Madison moved to approve Mr. McGarrity and Mr. Ellingson for EAC membership. Mr. Foose seconded the motion. No further discussion; motion carried.

7. LICENSING MATTERS

Discussion, Consideration and Vote on the following:

Whether to Grant or Deny Registration after Full Board Review:

- A. Blaker, Allen Home Inspector Application #151527
Applicant, Allen Blaker, appeared and addressed the Board. Staff recommended denying him certification for lack of good moral character. Applicant explained that he discussed his license issues with the Private Post-Secondary Education Board. He claimed there was no wrong doing on his part or on the part of his school. He explained that he was a home inspector for 31 years and had never had a complaint filed against him. He asked the Board to consider the time he spent on EACs for board investigations.

Mr. Noel asked about the Private Post-Secondary Education Board and inquired of the Applicant about the status of his prior school. Mr. Noel asked how he lost his license at Private-Post Secondary. Mr. Blaker stated he failed to pay this Board's renewal fee of his CHI license and the Board cancelled it. The Board questioned the validity of the education certificate that Mr. Blaker provided when asked by staff to provide proof of completion of the education requirement for certification.

Mr. Madison moved to grant registration. Mr. Folk seconded the motion. No further discussion; motion carried.

- B. Dreyer, John Mechanical Engineer Application #160204
Mr. Madison agreed with the evaluator's recommendation that the supervisors that provided COEs were not qualified to opine about the Applicant's mechanical engineering qualifications for registration. Mr. Madison moved to close the application until the Applicant can obtain qualified COEs attesting to his skill and abilities to practice as a mechanical engineer. Mr. Marley seconded the motion. No further discussion; motion carried. Staff clarified that the application was incomplete.
- C. Saenz, Joseph Mechanical Engineer Application #160009
Mr. Madison stated that the supervisors that provided COEs fall under the industrial exemption and are qualified to opine about the Applicant's skill and abilities. He moved to grant registration. Mr. Stanley seconded the motion. No further discussion; motion carried

Whether to Grant or Deny Request for Extension of Licensing Time Frames

- D. Freeman, Jacob Alarm Agent Application #151429

Ms. Fleming explained that Applicant was arrested in California but no disposition was recorded. The Applicant failed to disclose this arrest on his application. Mr. Stanley moved to approve an extension of the application timeframes for 60 days to receive necessary documents. Mr. Madison seconded the motion. No further discussion; motion carried.

8. LICENSING CONSENT AGENDA

A. Review, Consideration, and Action on Staff Recommendations for the following:

1. Cancellation of registrations and certifications that have been expired for one full renewal period;

B. Review of the List of registrations and certifications granted by the Executive Director pursuant to A.R.S. § 32-122.05, 32-122.06, and A.R.S. § 32-123.

List available for public review upon request.

There were no cancellations or list, submitted to the Board for review this month.

9. POLICY MATTERS

Review, Consideration, and Possible Action on the following:

A. ASU's Diagram and Request for Support of its Submission to NCARB for Consideration and Acceptance into the Integrated Path to Licensure.

The Board discussed NCARB's Integrated Path to Licensure and ASU's proposed submission to NCARB for approval. The Board requested a more detailed submission from ASU.

B. Update on CLARB's Model Board Pilot Program from Veronica Meadows, CLARB's Senior Director of Member Engagement and Strategic Governance.

Veronica Meadows was unable to meet with the Board and will reschedule at a later date.

C. Legislative Update.

Ms. Cornelius reported that House bill 2613 proposes to make registration for geologists voluntary. There may be a sponsor who will amend the bill to remove the geologists from the bill. The bill has already been amended to push up the time frame for the cost benefit analysis. Once the cost benefit analysis has been completed, there should be enough time to empanel a legislative study committee to look at the pros and cons of moving this Board over to DOA, if necessary.

10. DIRECTOR'S REPORT

A. Budget Update

Ms. Cornelius stated with 67% of the budget year elapsed; the Board has spent 60% of its appropriation and 70% of its revenue.

B. Staff Update

Ms. Cornelius reported that Carly Broadbent had been hired for the front desk position.

C. Previous Meeting Follow-Up

The Staff met with vendor – GL Solutions on March 7, 2016. The Board is very excited to work with them in building a new computer system.

D. Director's Meetings

Ms. Cornelius and Ms. Pritzl continue to meet with legislators and policy makers to get the Board's four bills assigned to committees.

11. BOARD CHAIR'S REPORT – The Chairman waived giving a report this month.

12. STANDING COMMITTEE REPORTS

A. Legislation and Rules Committee – Nothing new to report.

B. Home Inspector Rules and Standards Committee – There is a meeting scheduled for Tuesday, March 29.

13. BOARD MEMBER REPORTS ON OUTSIDE ACTIVITIES

A. ASBOG – The Board has been in contact with ASBOG regarding the possible deregulation of geologists and the impact that action may have on the Board's candidates' accessibility to the exams. ASBOG's director has indicated that as long as the Board requests access to the exams, they will continue to provide them to our candidates.

B. CLARB – Nothing new to report.

C. NCARB – NCARB entered into a Mutual Recognition Agreement with Australia and New Zealand. Ms. Cornelius, Ms. Pritzl, Mr. Brady, and Mr. Marley attended the Regional Conference in Savannah. Ms. Cornelius will be attending a meeting of Ethics Task Force in Minnesota on March 31 – April 2, 2016.

D. NCEES – Ms. Pritzl, Mr. Madison, and Dr. Angel will be attending the Zone meeting in Alaska on May 19 – May 21, 2016. The NCEES Annual meeting will be held in Indianapolis, IN in August, 2016.

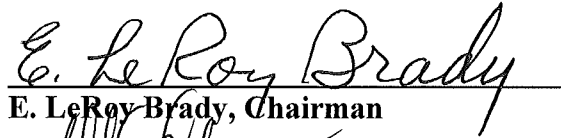
14. FUTURE BOARD MEETINGS – Tuesday, April 26, 2016

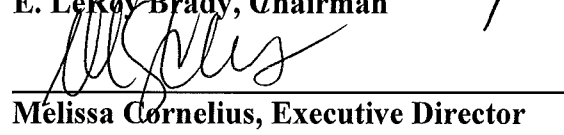
15. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.

- Mr. Madison would like to meet to discuss the EAC pool with Board staff.

- Discussion regarding cases heard before the ALJ vs. the Board

16. MEETING ADJOURNMENT – 1:13PM


E. LeRoy Brady, Chairman


Melissa Cornelius, Executive Director